

APPENDIX B

Re: Former Synergy Site

DECISION DOCUMENT PREAUTHORIZATION OF A CERCLA SECTION 111(a) CLAIM

THE FORMER SYNERGY SITE CLAREMONT, NEW HAMPSHIRE

I. STATEMENT OF AUTHORITY

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9611, authorizes the reimbursement of response costs incurred in carrying out the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (NCP). Section 112 of CERCLA, 42 U.S.C. § 9612, directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund ("Superfund" or the "Fund"). Executive Order 12580 (52 Fed Reg. 2923, January 29, 1987) delegates to the Administrator of the Environmental Protection Agency (EPA) the responsibility for CERCLA claims and for establishing forms and procedures for such claims. The forms and procedures can be found in the Response Claims Procedures for the Hazardous Substance Superfund, 40 C.F.R. Part 307, 58 Fed. Reg. 5460 (January 21, 1993). Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to Section 122(b) of CERCLA, 42 U.S.C. § 9622(b). The Director of the Office of Emergency and Remedial Response (OERR) is delegated authority to evaluate and make determinations regarding claims (EPA Delegation 14-9, September 13, 1987 and EPA Redelegation 14-9 "Claims Asserted Against the Fund," May 25, 1988). EPA Delegation 14-9, July 24, 2002, redelegates the authority to preauthorize claims against the Hazardous Substance Superfund for necessary response costs, and to approve reimbursement for claimed response costs, to the Regional Administrators, and the authority to serve as the Review Officer to the Assistant Administrator for Solid Waste and Emergency Response. EPA Delegation 14-9, December 17, 2002, further redelegates the authority to preauthorize claims against the Hazardous Substance Superfund for necessary response costs to the Director of the Office of Site Remediation and Restoration, Region 1.

II. BACKGROUND ON THE SITE

The Former Synergy Site (the "Site") is located at Lower Cul De Sac Place in Claremont, Sullivan County, New Hampshire. An Action Memorandum for the proposed removal action at the Site was signed by the Director of the Office of Site Remediation and Restoration, EPA Region 1 on August 8, 2013. Hazardous substances present in soil (surface and depth) and river sediment at the Site, as well as a continuing source of contamination in groundwater which flows towards and into the adjacent Sugar River, if not addressed by implementing the response actions selected in the Action Memorandum, will continue to pose a threat to human health and the environment.

The Site is the location of a defunct manufactured gas plant (MGP) and is heavily impacted by an oily waste product (coal tar). The product appears to be the residual from the historic

manufactured gas process. Coal tar is a brown or black liquid, which smells of naphthalene and aromatic hydrocarbons and is among the by-products when coal is carbonized to make coke or gasified to make gas. Coal gas is a flammable gaseous fuel made from coal and was supplied to the Monadnock Mill Complex located directly across the Sugar River, via a piped distribution system. In 1944, gas production ceased and the North American Utility and Construction Corporation acquired a controlling interest in the Site where it began distributing propane from the Site. Propane distribution was the primary function of the Site under a variety of owners until the property was abandoned sometime within the past few years.

In March, 2015, the Respondent, AmeriGas Propane, L.P., submitted a formal application for preauthorization as required by Section 300.700(d) of the NCP and 40 C.F.R. § 307.22. An Administrative Settlement Agreement and Order on Consent for Removal Action ("AOC") between EPA and the Respondent is being executed in conjunction with this Decision Document ("Preauthorization Decision Document" or "PDD").

Notwithstanding the findings and determinations set forth below, and in the AOC, nothing in this PDD or the AOC shall be deemed to be an admission of fact or law by Respondent. Likewise, no finding of fact in Section IV or determination or conclusion of law in Section V shall have any collateral estoppel, issue, or claim preclusion or other binding effect on Respondent in any proceeding except one to enforce the terms of the PDD.

III. FINDINGS

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents the Agency's commitment to reimburse a claimant from the Superfund, subject to any maximum amount of money set forth in this PDD, if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

EPA has determined, based on its evaluation of relevant documents and the Respondent's Application for Preauthorization ("Application") pursuant to 40 C.F.R. § 300.700(d) that:

- (A) A release or potential release of hazardous substances warranting a response under Section 300.435 of the NCP exists at the Site;
- (B) The Respondent has agreed to implement the cost-effective remedy selected by the EPA to address the threat posed by the release at the Site;
- (C) The Respondent has demonstrated engineering expertise and a knowledge of the NCP and attendant guidance;
- (D) The activities proposed by the Respondent, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and

(E) The Respondent has obtained the consent of the State of New Hampshire.

EPA has determined, consistent with 40 C.F.R. § 307.23, that the Application submitted by the Respondent demonstrates a knowledge of relevant NCP provisions, 40 C.F.R. Part 307, and EPA guidance sufficient for the conduct of a Removal Action at the Site.

The Respondent is generally obligated to comply with all provisions and representations in the Application for Preauthorization, and to notify EPA of any changed circumstances which alter those provisions. If circumstances change between the time the Application is submitted, and the time of remedy implementation, it is in EPA's discretion to determine which Application provisions are still valid and which provisions no longer apply. The AOC, including the terms and conditions of the PDD, shall govern the conduct of response activities at the Site. In the event of any ambiguity or inconsistency between the Application for Preauthorization and this PDD, with regard to claims against the Fund, the PDD and the AOC shall govern.

IV. PREAUTHORIZATION DECISION

I preauthorize the Respondent to submit a claim(s) against the Superfund for an amount not to exceed \$1,500,000 of reasonable and necessary eligible costs for the Removal Action incurred pursuant to the Action Memorandum and the AOC for the Site. This preauthorization is subject to compliance with the AOC and the provisions of this PDD.

V. AUDIT PROCEDURES

The Respondent shall develop and implement audit procedures which will ensure its ability to obtain and implement all agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. § 307.32(e). Consistent with the AOC for the Site, those requirements shall include but not necessarily be limited to the following procedures.

A. The Respondent will develop and implement procedures which provide adequate public notice of solicitations for offers or bids on contracts. Solicitations must include evaluation methods and criteria for contractor selection. The Respondent shall notify EPA of the qualifications of all contractors and principal subcontractors hired to perform preauthorized response actions. EPA shall have the right to disapprove the selection of any contractor or subcontractor selected by the Respondent. EPA shall provide written notice to the Respondent of any such disapproval.

B. As required by 40 C.F.R. § 307.21(e), the Respondent will develop and implement procedures for procurement transactions which provide maximum open and free competition; do not unduly restrict or eliminate competition; and provide for the award of contracts to the lowest, responsive, responsible bidder. The Respondent and its contractors shall use free and open competition for all supplies, services and construction with respect to the Work performed at the

Site. There are a number of ways that the Respondents can meet these requirements including but not limited to the following:

1. For example, if the Respondent awards a fixed price contract to a prime contractor, the Respondent has satisfied the requirement of open and free competition with regard to any subcontracts awarded within the scope of the prime contract.
2. The Respondent is not required to comply with the Federal procurement requirements found at 40 C.F.R. Part 33 or EPA's Guidance on Procurement Under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988), in meeting these requirements. However, EPA does require that the Respondent use these documents for guidance in developing procurement procedures for small purchases, formal advertising, competitive negotiations and noncompetitive negotiations as each may be appropriate to remedying the release or threat of release at the Site.
3. With reference to small purchase procedures, EPA defines small purchase procedures as those relatively simple, informal procurement methods for securing services, supplies and other property from an adequate number of qualified sources in instances in which the services, supplies, and other property being purchased constitute a discrete procurement transaction and do not cost more than a certain amount in the aggregate (Example: \$25,000). Respondent can meet the requirements of maximum free and open competition with respect to small purchases by developing procedures which follow 40 C.F.R. Part 33 or EPA's Guidance on Procurement under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988). However, Respondent shall in no event divide procurement transactions into smaller parts to avoid the dollar limitation.

C. The Respondent may use a list or lists of pre-qualified persons, firms, or products to acquire goods and services. The Respondent shall make each pre-qualification using evaluation methods and criteria which are consistent with the selection and evaluation criteria developed pursuant to Section V.A., above. Such list(s) must be current and include enough qualified sources to ensure maximum open and free competition. The Respondent shall not preclude potential offerors not on the pre-qualified list from qualifying during the solicitation period.

D. The Respondent shall develop and implement procedures to settle and satisfactorily resolve all contractual and administrative matters arising out of agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. § 307.32(e). All of the following actions shall be conducted in a manner to assure that the preauthorized response actions are performed in accordance with all terms, conditions and specifications of contracts as required by EPA: (1) invitations for bids or requests for proposals; (2) contractor selection; (3) subcontractor approval; (4) change orders and contractor claims (procedures should minimize these actions); (5) resolution of protests, claims, and other procurement related disputes; and (6) subcontract administration.

E. The Respondent shall develop and implement a change order management policy and procedure generally in accordance with EPA's Guidance on Procurement Under Superfund Remedial Cooperative Agreements (OSWER Directive 9375.1-11, June 1988).

F. The Respondent shall develop and implement a financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

G. Modification of elements or performance requirements contained in the AOC shall be consistent with Section XXVII of the AOC and shall require approval by the Director, Office of Site Remediation and Restoration (OSRR) or his/her designee. Such modifications, when approved by the Director, OSRR or his/her designee in accordance with Agency procedures, shall modify this PDD.

VI. CLAIMS PROCEDURES

A. Pursuant to Section 111(a)(2) of CERCLA, EPA may reimburse necessary response costs incurred as a result of carrying out the NCP that satisfy the requirements of 40 C.F.R. § 307.21, subject to the following limitations:

1. Costs may be reimbursed only if incurred after the date of this preauthorization and consistent with the AOC;
2. Costs incurred for long-term operation and maintenance are not eligible for reimbursement from the Superfund; and

B. In submitting claims to the Superfund, the Respondent shall:

1. Document that response activities were preauthorized by EPA;
2. Substantiate all claimed costs through an adequate financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations; and
3. Document that all claimed costs were eligible for reimbursement, consistent with applicable requirements of 40 C.F.R. Part 307.

C. Claims may be submitted against the Fund by the Respondent only while the Respondent is in compliance with the terms of the AOC and pursuant to the terms of the AOC.

VII. OTHER CONSIDERATIONS

A. This PDD is intended to benefit only the Respondent and EPA. It extends no benefit to nor creates any right in any third party.

B. If any material statement or representation made in the Application for Preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Respondent. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XVI ("Claims Against the Superfund") of the AOC. Criminal and other penalties may apply as specified in 40 C.F.R. § 307.15.

C. The Fund's obligation in the event of failure of the Removal Action shall be governed by 40 C.F.R. § 307.42. EPA may require the Respondent to submit any additional information needed to determine whether the actions taken were in conformance with the AOC and were reasonable and necessary.

D. This preauthorization shall be effective as of the date of signature.

E. If it is subsequently determined by EPA that the preauthorized response actions that comprise the Removal Action require modification, the Respondent may submit to EPA a revised application for preauthorization and EPA will consider such application and may, in its sole discretion, authorize the Respondent to submit claims for these modified actions. Notwithstanding any provision of 40 C.F.R. 307.22(i) or EPA's approval of any modified actions, the Respondent may not submit revised applications or claims for all Work that exceed a total of \$1,500,000 of the necessary costs incurred under the Settlement Agreement and the Preauthorization Decision Document. In accordance with the requirements of 40 C.F.R. § 307.22(i), a revised application for preauthorization must be approved by EPA before different, or additional, actions are undertaken if such actions are to be eligible for compensation from the Fund.



Nancy Barmakian
Acting Director, Office of Site Remediation
& Restoration
Region I

04/01/15

Date